

## New NLS credit amendments to CLE rules

One of the best-kept secrets about Indiana continuing legal education is that not all attorney credits must be legal. And, as of Jan. 1, 2009, attorneys have an even greater choice of Non Legal Subject (NLS) courses that will count toward their annual and three-year CLE requirements.

### The original 2006 NLS amendment

NLS courses are a fairly new concept to Indiana continuing legal education. In 1996, the Indiana Supreme Court amended Admission & Discipline Rule 29 to allow attorneys to report 12 hours of the required 36 during the three-year education period in "non legal subject areas." The rule read: "... The commission acknowledges there are some Non Legal Subject Matter Courses [that] enhance an Attorney's competency in his or her individual practice. ... An Attorney must demonstrate that the Non Legal Subject Matter Course will enhance that Attorney's individual practice. ..."

The 1996 amendment placed strict limitations on these types of courses for CLE credit. For example, only attorneys could apply for accreditation of NLS courses, and the courses had to be directed to attorneys. Additionally, courses that dealt with stress management for attorneys were to be denied accreditation. This allowance was treated more or less as an accommodation.

Generally, only attorneys were allowed to apply for NLS accreditation. Only on rare occasion were sponsors allowed to apply for accreditation and advertise NLS courses. Because of these limitations, there was not a groundswell of NLS applications. Since January 1997, 71,577 total courses have been approved for continuing legal education credit. Of that total,

only 1,556 courses were NLS courses, which represents only 2 percent of the total courses approved by the commission. Fears that attorneys would soon want to report more or all of their requirements through NLS credits have not materialized.

### The 2009 amendments

In the summer of 2006, the commission conducted an in-depth review of Admission & Discipline Rule 29. It took into account the types and numbers of NLS courses that were approved in other states; comments from the Disciplinary Commission and the Judges & Lawyers Assistance Program; and a detailed request for changes by the curriculum committee of ICLEF. The commission also considered the need for other rule changes as well. Final proposed rule changes included, but were not limited to, the following:

1. adding a nondiscrimination clause in the rule which would provide that any attendance restrictions imposed by a sponsor must be grounded in a bona fide educational objective;
2. clarifying qualifications for approved sponsors; and
3. allowing accreditation of wellness courses targeted to attorneys.

The commission's proposed rule changes were posted for comment by the Indiana Rules Committee. Most of the proposed changes were approved by the Indiana Supreme Court and made effective Jan. 1. The end result is a rule that is much friendlier to attorneys' needs for NLS training and to the sponsors' ability to advertise approved NLS courses. The new, two-page NLS application form and cover letter are available at [www.in.gov/judiciary/cle](http://www.in.gov/judiciary/cle), by e-mailing Julia Orzeske at [jorzeske@courts.state.in.us](mailto:jorzeske@courts.state.in.us)

or by calling the commission office at 317/232-1943.

### Accreditation following the new amendments for NLS

In reviewing NLS applications for accreditation, the commission will first consider whether a course will make a significant contribution to the professional competency of attorneys or judges. In order to determine whether a course meets this standard, the commission will review the course differently, depending on whether the application is supplied by the sponsor or an attorney. The bar is somewhat higher for a sponsor than for an individual attorney in meeting the standard. Admission & Discipline Rule 29, section 3, sets out the criteria for approval.

In the case of a *sponsor* applying for NLS accreditation, the commission will consider whether:

1. The course deals with matters related directly to the practice of law or the professional responsibility of Attorneys or Judges. Guidelines, section 3(a)(2).
2. Each faculty member who has teaching responsibility in the course is qualified by academic work or practical experience to teach the assigned subject. Guidelines, section 3(a)(3).
3. The physical setting for the course is suitable, including the availability of a writing surface and accessibility to persons with disabilities. Guidelines, section 3(a)(4).

4. High-quality written materials including notes and outlines are available at or prior to the time the course is offered to all Attorneys or Judges who enroll. Guidelines, section 3(a)(5).

5. The course is of sufficient length to provide a

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substantial educational experience. Courses of less than 1 hour will be reviewed carefully to determine if they furnish a substantial educational experience. Guidelines, section 3(a)(6).

6. There are live presentations, or there is a licensed Indiana Attorney, whose function shall be to certify attendance to accompany the replaying of tapes. Guidelines, section 3(a)(7).

7. The applicant has sufficiently identified those portions of a seminar that should be accredited. It shall be the duty of the applicant to apply separately for accreditation of the legal portions of a seminar, where the substance of a seminar is not entirely legal. The commission may deny accreditation for an entire program where separate application is not made and where a significant portion of the program is not continuing legal education. Guidelines, section 3(a)(8).

8. The course is designed for and targeted to Attorneys or Judges. Guidelines, section 3(a)(9).

Wellness courses must be *specifically targeted* to attorneys and judges.

In the case of an *attorney* applicant, the commission may use the above criteria, without referring to the following Guideline sections if the course is directly related to a subject matter directly applicable to the applicant's practice:

1. The course deals with matters related directly to the practice of law or the professional responsibility of Attorneys or Judges. Guidelines, section 3(a)(2).

2. The course is designed for and targeted to Attorneys or Judges. Guidelines, section 3(a)(9).

### **Caveats**

Although the new rule makes it easier for an attorney to receive NLS credit, by no means are all such courses approved. For example, courses that are delivered by in-house or distance education means are not approved for NLS. Also, the attorney will have to provide information that an NLS course he or she plans to attend is *directly related* to subject matter *directly applicable* to the applicant's practice.

### **Recognizing the importance of health in the practice of law**

The practice of law is a stressful trade. The demands placed on lawyers are tremendous. Too many lawyers trade in their health for the billable hour or long nights at the office. This all-too-familiar trade-off inevitably leads to stress, lawyer inefficiency, substance abuse and in some instances death.

When the commission reviewed Discipline Rule 29 in 2006, it considered how it could offer Indiana lawyers the educational tools needed to battle the stress and rigors of the practice. The Disciplinary Commission, Judges & Lawyers Assistance Program and ICLEF were instrumental in highlighting for the commission the benefits of offering programs to Indiana lawyers that focused on health and wellness.

The 2009 amendments to Rule 29 are an acknowledgment by the commission of the importance of wellness courses and the need to have them offered to Indiana lawyers. Before the 2009 amendments, wellness courses were denied accreditation. Now, Rule 29 expressly permits Indiana lawyers to receive NLS for wellness courses. This is a dramatic change in the rule.

Indiana lawyers are now provided the opportunity to take CLE courses that offer much needed information on how to balance the demands of the practice with the need to remain healthy. John E. Hughes, president of the Lake County Bar Association, applauds the amendment to Rule 29. His comment regarding the change is telling:

The amendment to Rule 29 is a step in the right direction and will provide Indiana lawyers educational options to ensure balance in their lives, which will in turn translate to sound legal advice to the clients they serve.

In sum, the amendments to Rule 29 will have a positive impact on the legal profession. Readers should feel free to contact Executive Director Julia Orzeske at [jorzeske@courts.state.in.us](mailto:jorzeske@courts.state.in.us) or 317/232-1945 if they have further questions or comments after reading this article. 📧